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CLEARINGHOUSE RULE 95-190

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Section ATPC 42.01 (1) should be s. ATPC 42.01 (9), so that the term defined is placed in alphabetical order.

b. It is unclear why the definition of “manufacture,” set forth in s. ATPC 42.01 (14), includes the labeling of commercial feed. Is it accurate to say that someone has manufactured feed if they have, in fact, only labeled it?

c. Is the term “labeling,” which is defined in s. ATPC 42.01 (13) actually used in the text of the rule? In addition, the inclusion of “advertising referencing a commercial feed” within the definition of the term “labeling” implies that all of the label requirements set forth in various sections of the rule apply to all advertising. Is this accurate?

d. The definition set forth in s. ATPC 42.01 (22) is confusing and should be rewritten.

e. Section ATPC 42.02 (2) (c) (intro.) permits a person, without a license, to manufacture or distribute a custom-mixed feed under certain conditions, while par. (d) permits a person without a license to manufacture, label or distribute commercial feed under certain conditions. Is the omission of the authority to label feed in par. (c) deliberate?

f. A note should be inserted following s. ATPC 42.02 specifying where a license application may be acquired.

g. Section ATCP 42.06 (3), entitled “PROHIBITIONS,” should be numbered sub. (4). Also, does the prohibition set forth in par. (c) of that subsection apply if the commercial feed contains significant amounts of protein other than non-protein nitrogen?

h. Section ATCP 42.08 (1) (intro.) refers to the “feed label.” Does this term refer to something other than a “label” as defined in s. ATCP 42.01 (11)? If not, the term “label” should be used.

i. The phrase “which are needed for the safe administration and handling of the feed,” contained in s. ATCP 42.08 (1) (d), is superfluous and should be deleted. In addition, this phrase might be interpreted to limit the circumstances in which s. ATCP 42.22 applies.

j. Section ATCP 42.08 (2) is somewhat confusing. Specifically, it is unclear whether the label on feed which contains growth promotion or feed efficiency drugs must identify those drugs as ingredients even though, apparently, the amount of the drug present need not be specified.

k. In s. ATCP 42.10 (4) (i), would it be more accurate to define “broilers breeders” as chickens whose offspring are grown for human food? Is a “turkeys breeder,” discussed in par. (p), which is grown to produce fertile eggs, a turkey which is grown to produce offspring used for human food? If so, the latter term should be used in order to be consistent with the definitions which apply to other poultry grown to produce offspring used for human food. Also, the terms set forth in s. ATCP 42.10 (7) should be described with the same level of detail as the other terms in that section. For example, the rule should specify at what age a female horse is considered a “mare” rather than a “foal” and the age at which a male horse is no longer a “foal.” In addition, does the term “breeding” apply equally to male and female horses? Finally, it is unclear which horses would fit into the class “maintenance.”

l. In s. ATCP 42.10 (9) (d), should that description of the term include a qualification that the ducks within that term are intended to produce eggs for human consumption or offspring?

m. Section ATCP 42.12 (1) should specify that the guaranteed analysis requirements set forth in that subsection are in addition to any guaranteed analyses required for specific types of feed under s. ATCP 42.14.

n. Parallel terminology should be used in s. ATCP 42.12 (1) (c), (d) and (e). Specifically, the phrase “mineral guarantees shall comply with sub. (3)” should be added to par. (c).

o. Section ATCP 42.12 (2) (c) includes substances that are not required to be included in the guaranteed analysis under sub. (1). Are these substances required to be included in the guaranteed analysis under s. 42.14? If so, does par. (c) list all possible substances that must be included in a guaranteed analysis under s. ATCP 42.14?

p. The phrase “whether or not required under s. ATCP 42.12” is unnecessary and could be confusing, as used in s. ATCP 42.14 (9) (intro.), (10) (intro.), (11) (intro.) and (12) (intro.). That phrase should be replaced with the phrase “in addition to the requirements set forth in s. 42.12,” which should be inserted prior to the current text of those subsections.

- q. It appears that par. (c) was inadvertently omitted from s. ATCP 42.16 (3).
- r. In s. ATCP 42.18 (1), the second occurrence of the word “a” should be changed to “the” to make it clearer that only one person is responsible for the content and labeling of commercial feed.
- s. The cross-reference contained in s. ATCP 42.22 (2) (c) would be more informative if it referred specifically to s. ATCP 42.54 (3).
- t. Does s. ATCP 42.24 require that custom-mixed feed be physically labeled with the information set forth in that section? If not, that section should specifically state that fact. The title of the section, “LABELING CUSTOM-MIXED FEED,” creates the perception that custom-mixed feed must actually be labeled. However, sub. (1) (intro.) appears to contradict this and permits the manufacturer of custom-mixed feed to provide the information in a separate document.
- u. The cross-reference set forth in s. ATCP 42.28 (1) (g) would be more informative if it were specifically to s. ATCP 42.18 (1).
- v. It appears that s. ATCP 42.30 (2) incorrectly refers to sub. (4) as the subsection that provides an exemption to the requirement to express guarantees as a percentage by weight of the dog or cat food. There is no sub. (4) in s. ATCP 42.30. Should the references to subs. (3) and (4) be to s. ATCP 42.12 (3) and (4)?
- w. The requirements set forth in the Note following s. ATCP 42.32 (1) should be placed in the text of the rule.
- x. Parentheses should not be used in rules. [See s. 1.01 (6), Manual.] Therefore, in s. ATCP 42.40 (4) (a), the parenthetical material should be worked into the text.
- y. In s. ATCP 42.42 (intro.), “at least” should follow “unless.” Also, there is no sub. (3); is this intended?
- z. Section ATCP 42.44 is confusing in that subs. (5) and (6) contain the same introductory material. The rule would be more clear if the introductory material were included in only one subsection of the rule and the subunits were rearranged to all be within that same subsection. Specifically, the combined subsections could read as follows:
- (5) Claim that the dog or cat food provides a complete, perfect, balanced or nutritionally adequate ration for dogs or cats unless both of the following apply:
 - (a) The claim is true for all life stages of the dogs or cats; or the claim clearly identifies the life stage of dogs or cats for which it is true.
 - (b) Any of the following apply:
 - 1. The dog or cat food, when fed in recommended amounts, meets all nutrient establishments established in an applicable pet nutrient

profile specified in the official publication of the association of American feed control officials.

2. The dog or cat food is adequate as a sole source of nourishment for dogs or cats when fed according to label directions and according to feeding protocols for dogs and cats specified in the official publication of the association of American feed control officials.

3. The manufacturer possesses valid scientific evidence equivalent to that specified under subd. 1. or 2. that substantiates the label claim.

aa. It appears that sub. (10) was inadvertently omitted from s. ATPC 42.44.

ab. In s. ATPC 42.50 (2) (b), the phrase “according to this chapter” should be replaced with a cross-reference to the rule section which sets forth the requirements for labeling medicated commercial feed.

ac. The subunits following s. ATPC 42.56 (1) are incorrectly labeled as numbered subsections. They should be labeled as lettered paragraphs.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The requirement set forth in s. ATPC 42.20 (2) (c) that net quantity must be expressed in terms of measure or count if “net quantity expressed in terms of weight is not fully informative” is unclear. Perhaps a note could be inserted after that paragraph providing an example of a situation in which net quantity expressed in terms of weight is not fully informative.

b. It is unclear what the purpose is for the information contained in the last sentence in s. ATPC 42.56 (3). That sentence does not indicate whether the department intends to permit alleged violators to request and receive a contested case hearing and, if so, under what conditions such a request will be granted.